No. 90-1912

In the Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES,

Respondents.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

PETITIONER'S BRIEF ON THE MERITS

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Certiorari Granted October 7, 1991

QUESTIONS PRESENTED

In *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), this Court held that a local county assessor's practice of assessing and taxing recently acquired properties based on their acquisition price, while permitting comparable but longer-held properties to retain old and significantly lower outdated assessments with negligible periodic adjustments (the so-called "welcome stranger" assessment method) violated the Equal Protection Clause of the Fourteenth Amendment. California's Proposition 13 legislatively imposes a welcome stranger scheme on the State's *ad valorem* property tax system.

This case presents two questions:

1. Does California's *ad valorem* property tax system as modified by Proposition 13's welcome stranger provision violate the Equal Protection Clause by commonly taxing newly purchased property 8, 10, 12, 15, and 17 times higher than like property owned by long-time owners, with no possibility of ever seasonably attaining rough equality in tax treatment?

2. Does Proposition 13's allocation of property tax benefits and burdens according to length of homeownership require that the welcome stranger provision be subject to a heightened scrutiny analysis and invalidated as violative of the right to travel?

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is reported at 225 Cal.App.3d 1259, 275 Cal.Rptr. 684, and is reprinted in Appendix A to the Petition for Certiorari (hereinafter "Pet. App.").

The California Supreme Court's unreported denial of review is reprinted at Pet. App. B1.

JURISDICTION

The judgment of the California Court of Appeal was entered December 3, 1990. The timely petition for review of petitioner Stephanie Nordlinger was denied by the California Supreme Court on February 28, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTES/CONSTITUTIONAL PROVISIONS INVOLVED

1. Article XIII of the California Constitution provides:

> Sec. 1. Unless otherwise provided by this Constitution or the laws of the United States:
>
> (a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.
>
> (b) All property so assessed shall be taxed in proportion to its full value.

2. The full text of Article XIII A of the California Constitution (popularly known as "Proposition 13") is

set forth at Pet. App. C1. Relevant portions of the text include the following:

> Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.
>
> Section 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.
>
> (b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

3. United States Constitution, Article XIV, Section 1 provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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PETITIONER'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

A. Proposition 13's Operation.

The tax assessment provisions of Article XIII A of the California Constitution force petitioner Stephanie Nordlinger to pay property taxes many times higher than her neighbors who live in identical houses purchased in earlier years. Under Article XIII A, long-time property owners pay very low property taxes that reflect outdated low assessments, while new buyers are saddled with a disproportionate share of the property tax burden. Tax assessment systems like Article XIII A have been labeled "welcome stranger" schemes because, over time, they shift the overwhelming majority of increases in future property tax revenues onto new buyers (the "strangers"),

who are "welcomed" by the existing owners who pay only negligible increases.

Under a traditional *ad valorem* property tax system, property is assessed at its current market value, and then a tax rate is applied to the assessment. If the property either increases or decreases in value, the property tax assessment is adjusted to reflect the change. Article XIII A works in this traditional manner except that it limits any increases in the assessment of real property to the lesser of 2% or the rate of inflation, until the property changes ownership.[1] If property declines in market value below the initial assessment, Article XIII A operates like a traditional *ad valorem* system: the property is reassessed downward to reflect its actual value. As in a current market value system, Article XIII A provides that newly purchased property is reassessed at its actual market value, which usually is the same as its purchase price.[2] New construction also triggers a reassessment, but only of the newly constructed portion of the property. *See* Cal. Const. art. XIII A, §§1 and 2 (West Supp. 1991).

B. Property Tax Assessment Disparities Resulting From Proposition 13's Operation.

After many years of saving, in November 1988 petitioner Stephanie Nordlinger purchased her first

[1]Section 1 of Article XIII A generally limits the maximum property tax rate to 1% of assessed value. Petitioner Nordlinger challenges only the assessment provisions of Article XIII A, and does not challenge the validity of the 1% tax rate cap.

[2]Rather than assessing properties purchased before 1975 at their purchase value, Proposition 13 rolled back assessments for all these properties from their value in 1978 (when Proposition 13 was enacted) to their 1975-76 values.

home in the modest Baldwin Hills section of Los Angeles, for $170,000. Joint Appendix ("J.A.") 60. Her 1,100-square-foot home, located in a post-World War II tract development, was priced significantly less than the median-priced home in Los Angeles County at that time. J.A. 47, 60. When she purchased her home, her more-fortunate neighbors, who had bought virtually identical homes before 1975, were paying property taxes averaging only $376 annually, reflecting their 1975 base year assessments[3] plus the small 2% annual increase that Article XIII A allows. J.A. 18-20, 29-30, 64. In contrast, petitioner Nordlinger was taxed $1,700 in 1989 (her first full year of paying taxes on her home), reflecting reassessment to a new base year of 1988. J.A. 18-20, 62.

Over the first ten years of owning her home, petitioner Nordlinger's property taxes will approach $19,000, while her neighbors who bought comparable homes in 1975 will pay only $4,100. Thus, solely because she did not (indeed could not) purchase her home until 1988, during the next decade Nordlinger will pay nearly $15,000 more in property taxes than her neighbors who live in comparable houses and receive the same public services and facilities.

Petitioner Nordlinger's situation is far from unusual. For example, a 1989 homebuyer in a rapidly appreciating neighborhood in Santa Monica paid 1989 property taxes of $4,650, while his neighbors who bought comparable homes in the mid-1970s paid as little as $270 for the 1989 tax year. J.A. 66, 76-78. The recent Santa Monica purchaser will thus pay the tax collector almost $51,000 during the next decade for exactly the same public

[3]The term "base year" refers to the purchaser's year of acquisition or 1975, whichever is later in time.

services and facilities that his neighbors who own virtually identical homes will get for the bargain price of $3,000 — a disparity of 17:1 and a difference of $48,000!

Petitioner's extensive studies presented below, based largely on respondent Assessor's records, document the common property tax disparities that Proposition 13 creates throughout Los Angeles County.[4] For example, 1989 purchasers of homes in a broad range of Los Angeles County neighborhoods commonly pay taxes 8, 10, 12, 15, and 17 times higher than those paid by long-time homeowners with 1975 base years in the same neighborhood. J.A. 20-24, 29-32, 66-67, 76-78, 86-92. These disparities are extremely common because, as of 1989, well over a third of all Los Angeles County homes still retained 1975 base year assessments, and fully half retained 1978 base years. J.A. 37, 46. Recent Los Angeles County purchasers of other types of properties are also commonly subject to extremely disproportionate tax burdens. Residential income (apartment) and commercial property tax disparities commonly range between 8:1 and 9:1, reaching as high as 11:1. J.A. 68-70, 82-

[4]These studies, performed by economist David Gold, include a "County Cross-Section Study" and a "Neighborhoods Study." Together, the studies analyzed more than 10,000 recent property sales. The County Cross-Section Study analyzed by computer every property sale in Los Angeles County in August 1989. For each sale, it calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment). J.A. 66, 76-78.

The Neighborhoods Study intensively researched specific neighborhoods. For various neighborhoods, it compared the assessments on recent buyers and long-time owners of comparable homes, recording disparity levels seen repeatedly between new and long-time owners. The computer analysis of these neighborhoods was then cross-checked with field visits by professional appraisers. J.A. 17-24, 67, 76.

85. The tax disparities on comparable vacant lots reached 25:1, 50:1 and more, and even a staggering 583:1. J.A. 68.[5] *See* Tables and Graphs summarizing common single family residential and other property tax disparities in various Los Angeles County neighborhoods in 1989, based on the exhibits presented below, in the Appendix to this brief ("Appendix") at A1-A10.

Glaring inequities among property owners are not, by any means, confined to the same neighborhoods. Inequities between people living in different neighborhoods are equally stark. For example, in 1989, after only a dozen years of Proposition 13's operation, the long-time owner of a stately 7,800-square-foot, seven-bedroom mansion on a huge lot in Beverly Hills (among the most luxurious homes in one of the most expensive neighborhoods in Los Angeles County), depicted in Photograph A below, paid *less* property tax annually than the new homeowner of a tiny 980-square-foot home on a small lot in an extremely modest Venice neighborhood, depicted in Photograph B below. J.A. 24, 70.

[5]Undeveloped lots showed by far the greatest disparities in the taxes paid by new versus long-time owners. Many raw lots, considered unbuildable in 1975, are now ready for development, due to intervening changes in zoning, accessibility and/or technology, making them now worth hundreds of thousands of dollars and more.

PHOTOGRAPH A - BEVERLY HILLS HOME

PHOTOGRAPH B - VENICE HOME

Likewise, petitioner Nordlinger's 1988 property tax assessment on her unpretentious Baldwin Hills tract home is almost identical to that of a pre-1976 owner of a fabulous beach-front Malibu residential property worth $2.1 million, even though her property is worth only 1/12th as much as his. J.A. 24, 70. Indeed, recent homebuyers who can afford only tiny bungalows in some of Los Angeles County's most crime-ridden and depressed areas in Watts and Compton must pay as much in property taxes as owners of spacious $1 million homes in the wealthy sections of Santa Monica, Pacific Palisades and Beverly Hills who purchased at least thirteen years ago or earlier. J.A. 23, 66, 67, 86-92.

Ironically, because values have increased most dramatically in affluent sections of Los Angeles County, Proposition 13 bestows its lowest effective tax rates on the community's wealthiest citizens. For example, in Beverly Hills, where properties have appreciated by as much as 1,600%, long-time homeowners pay an effective tax rate of only 1/12th of 1% of the present value of their homes. By contrast, long-time owners in Watts pay an effective tax rate more than double the Beverly Hills rate, 1/5th of 1% of their homes' value. *See* Appendix at A2, A4.

As inflation has diluted the value of the dollar, Proposition 13's assessment provisions have delivered *annual real tax cuts* to long-time owners, because inflation has averaged 6% annually in the Los Angeles-Long Beach area between 1978 and 1989, far exceeding the 2% maximum annual upward adjustment allowed by Proposition 13. J.A. 57. Thus, long-time owners in Los Angeles have enjoyed a 38% tax cut in real dollars between 1978 and 1989, and their real taxes continue to fall. J.A. 27.

These annual real tax cuts for long-time owners are subsidized entirely by new buyers who must pay an enormous percentage of the annual increases in overall property tax revenues. Between 1978 and 1989, property tax revenues from Los Angeles County single family homes increased at an average of 11.67% annually, so that by 1989, such revenues had increased by $1.23 billion over the tax level that homeowners paid in 1978. Post-1978 buyers paid for fully 95% of this total increase, even though they comprised only about 51% of all 1989 homeowners. A massive redistribution of wealth is resulting from this tax shift, so that by 1989, forced subsidies from post-1978 homebuyers to pre-1978 homeowners in Los Angeles County reached well into the hundreds of millions of dollars. *See* Appendix at A8, A9, A10.

Proposition 13's dramatic inequities will continue to grow even worse. Even if the appreciation rate of Southern California real estate permanently plunges to the level of the most conservative investments, residential disparities greater than 26:1 will be commonplace within ten years. J.A. 26. If, instead, property continues to appreciate at the rate it has since the Proposition 13 baseline year of 1975, continuing the pattern of boom and lull that has occurred during that time, within ten years many new homebuyers will be paying 70 to 80 times the taxes of their stay-put neighbors. J.A. 25-26, 70. *See* Appendix at A5.

C. Proceedings Below.

Petitioner Nordlinger filed her complaint on September 18, 1989 in Los Angeles County Superior Court seeking a declaratory judgment that, under this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), Proposition 13's welcome stranger assessment method violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. After exhausting her administrative remedies, she amended her complaint to include a claim for refund of unconstitutionally collected property taxes. J.A. 2-13.

When respondent Los Angeles County and its Assessor[6] (hereinafter "Assessor") demurred to the complaint (J.A. 14), Nordlinger opposed the demurrer and sought leave to amend her complaint to include additional factual and legal allegations. In support of her request to amend, Nordlinger presented the extensive studies described above, documenting tax disparities throughout Los Angeles County based largely on Assessor's records.[7] J.A. 16-86. On January 29, 1990, the superior court sustained Assessor's demurrer without leave to amend on the ground that, even if petitioner's complaint were supplemented with the extensive factual materials, she could not state a claim because, notwithstanding *Allegheny*, it was bound by the California Supreme Court's 1978 decision in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 583 P.2d 1281 (1978). Pet. App. D1 (minute order). In *Amador*, the state supreme court had upheld Proposition 13 just after its passage against facial equal protection and right to travel challenges, long before the extreme disparities of the

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[6]Then-Assessor John J. Lynch has been replaced by his successor, Kenneth Hahn.

[7]California law permits courts to consider the factual allegations contained in declarations supporting requests for leave to amend the complaint. *See, e.g., Minsky v. City of Los Angeles*, 11 Cal.3d 113, 520 P.2d 726 (1974).

past thirteen years had developed. The *Amador* decision was not appealed to this Court.

Nordlinger appealed the dismissal of her case, and the California Court of Appeal affirmed the ruling. *Nordlinger v. Lynch*, Pet. App. A1. The court concluded that it was still bound by *Amador*. It found *Allegheny* inapposite because Article XIII A legislatively mandates local assessors to use its welcome stranger tax assessment system, while the Webster County system struck down in *Allegheny* had been administratively implemented by a local assessor in a state whose legislation embodied a current market value system. Pet. App. A16-A21. Further, the court denied Nordlinger's constitutional right to travel claims because, it ruled, any benefits bestowed by California's welcome stranger system on long-time residents (as opposed to long-time homeowners) were merely "incidental" to Article XIII A's approach. Pet. App. A25.

In discussing Nordlinger's extensive documentation of common countywide disparities, however, the court observed that "it is not reasonably disputable that article XIIIA has resulted in gross disparities in the assessments of properties with comparable market values. . . ," and took judicial notice of those disparities. Pet. App. A12. Explicitly recognizing the manifest "unfairness which has developed from the acquisition value system" since 1978, the court also suggested that it would be "appropriate" for the California Supreme Court to "revisit" its dicta in *Amador* that, once it became operational, Proposition 13 might turn out to be fairer than a current value system. Pet. App. A16. But because it was constrained by *Amador*, such revisiting was not within the intermediate court's power. Pet. App. A17. The state supreme court

denied without comment petitioner's request for review on February 28, 1991. Pet. App. B1.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

It is no mystery why voters support welcome stranger tax policies: by so doing they reduce their own taxes while forcing newcomers to pay ever-increasing sums to finance the growing demands of government. For years, locally elected tax assessors discreetly implemented this popular but abusive system by failing to reassess properties already on the tax rolls while assessing new purchasers at full market value. As inflation drives up property values, the burden of taxation falls more and more heavily on recent purchasers of property — enabling long-time property owners to enjoy the benefits of swelling tax revenues while paying a mere fraction of the taxes imposed on their newly arrived neighbors.

Three terms ago, this Court put a halt to this practice. In *Allegheny*, 488 U.S. 336 (1989), the Court unanimously held that assessing comparable properties at different levels, based on obsolete historical values established at the time of acquisition, violates the Equal Protection Clause of the Fourteenth Amendment. Applying rational basis scrutiny, the Court found that such assessment policies discriminate against recent purchasers without any basis in "reasonable consideration of difference or policy." *Id.* at 344.

The only difference between this case and *Allegheny* is that the welcome stranger system in *Allegheny* was adopted informally by the locally elected assessor, while in this case it was adopted openly by thepeople in a referendum. The *Allegheny* Court explicitly referred to

the California system in a footnote, leaving the issue open for future decision. 488 U.S., at 344. The question in this case, accordingly, is whether the same principles of law that forbid discriminatory welcome stranger systems when adopted informally by an assessor apply when the system is formally incorporated into state law.

In Section I, we contend that the equal protection principles of *Allegheny* apply with equal force to all discriminatory tax systems, whether instituted by legislation, referendum, or administrative practice, and whether authorized, prohibited, or tolerated by state law. No state can justify its discrimination by the mere device of embedding the discrimination in law. If a welcome stranger system is unconstitutional when adopted by an assessor in Webster County, West Virginia, it is equally unconstitutional when adopted by a referendum in the State of California. To rule otherwise would inappropriately interject the federal courts into issues of state law and administration, an idea this Court has uniformly rejected.

In Section II, we apply the constitutional standard of *Allegheny* to the California system. Since the two systems are functionally identical, the conclusion, not surprisingly, is the same. The Equal Protection Clause demands that like properties be treated alike, and that any differences in taxation have a reasonable justification. Taking advantage of politically powerless groups is not a legitimate justification. From any perspective other than beggar-thy-neighbor, the welcome stranger policy is irrational. The use of outmoded valuations, based on a transaction that may have occurred fifteen years ago, bears no relationship to ability to pay, level of government services, or any other theory of equity or efficiency in taxation. Instead, it leads to wildly inequitable results (owners of modest bungalows paying

more in taxes than Beverly Hills mansion owners), distortions of the economy (established businesses gaining a competitive edge over new competitors), and multi-generational inhibitions on mobility (the system penalizes those who wish to sell and move). No disinterested person would devise such a system.

Moreover, in light of effects on the right to travel and the discriminatory burdens the system places on newcomers to the state, more than mere rational basis is required under the Equal Protection Clause. In Section III, we demonstrate that the welcome stranger provision of Article XIII A cannot possibly satisfy the heightened scrutiny demanded by *Zobel v. Williams*, 457 U.S. 55 (1982), and this Court's other precedents regarding discrimination against newcomers.

The Court's attention to the welcome stranger problem could not be more timely. As the court of appeal candidly acknowledged (Pet. App. A27 n.11), it is virtually impossible to dislodge a welcome stranger system through political channels once it is in place. Welcome stranger policies are universally recognized by professional bodies of assessors and tax experts as unfair and abusive, but the political allure is overwhelming. It is the old, old story of a politically dominant majority privileging itself at the expense of an inchoate and politically unrepresented group — and of the long-term well being of the community. Such a situation calls out for constitutional intervention.

Now that *Allegheny* has prohibited the quiet introduction of welcome stranger policies through administrative practice, states around the country will be eyeing the precedent of California. Can the same result be achieved by different means? Much disruption

and unfairness can be prevented if the temptation is removed before others succumb.

ARGUMENT

I.

CALIFORNIA'S "WELCOME STRANGER" PROPERTY TAX SCHEME CANNOT BE DISTINGUISHED SUBSTANTIVELY OR PROCEDURALLY FROM THE WEBSTER COUNTY ASSESSMENT PRACTICE FOUND UNCONSTITUTIONAL IN *ALLEGHENY*.

A. Welcome Stranger Schemes Shift a Disproportionate Share of the Property Tax Burden From Long-Time Property Owners to Newcomers, Precluding the "Seasonable Attainment of a Rough Equality Among Similarly Situated Taxpayers" Required by *Allegheny*.

The political appeal of a welcome stranger system stems from the fact that it limits unpopular across-the-board tax increases on existing property owners, who constitute a very high percentage of voters. Existing owners pay relatively low taxes based on rapidly outdated, artificially low assessed values, while recently purchased properties are reassessed at higher current market values and, consequently, their owners must bear a vastly disproportionate share of future tax revenue increases.[8] This political appeal has resulted in

[8] *See* Note, *Federal Accountability for Local Tax Assessment Schemes — An Equal Protection Overlay*: Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia, 43 Tax Law. 457, 471 (1990). *See also* K.K. Baar, *Property Tax Assessment Discrimination Against Low Income Neighborhoods*, 1 Prop. Tax J. 1, 6 (1982) ("political reality often forces [assessors] not to increase assessments in a manner which will stir strong political opposition"). Notably, despite their popularity, few assessors publicly acknowledge using welcome stranger systems. *See Allegheny*, Brief for the International Association of Assessing Officers as *Amicus Curiae*, at 9.

widespread use of the scheme by local assessors.[9] Local governments are assured the fiscal resources to maintain and improve local services, while assessors are more likely assured re-election.

Despite the political popularity of welcome stranger systems, professional assessor associations and scholars have strongly condemned them as "inherently inequitable" and "plainly unacceptable," because they invariably result in tax disparities between similarly situated property owners.[10] State courts, too, have ruled that these practices are so fundamentally unfair as to

[9] *See* W. Hellerstein & J.H. Peters, *Recent Supreme Court Decisions Have Far-Reaching Implications*, 70 J. Tax'n 306, 308-09 (1989); R.J. Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 262 (1990); R.D. Pomp, *What Is Happening to the Property Tax?*, 15 Assessors J. 107, 121 n.61 (1980).

[10] *See, e.g.*, Int'l Ass'n of Assessing Officers, *Improving Real Property Assessment — A Reference Manual* (1978), at 331 (welcome stranger reassessment practices are "plainly unacceptable"); Int'l Ass'n of Assessing Officers, *Property Tax Limit Legislation: An Evaluation*, 14 Assessors J. 129, 146, 152 (1979) (the inherently inequitable welcome stranger system's especially harsh impacts and disparities are the "least desirable" method of limiting the property tax). *See also* R.F. Kilmer, *The Legal Requirements for Equality in Tax Assessments*, 25 Alb. L. Rev. 203, 206 (1961); Comment, *Real Property Tax Assessment: A Look at Its Administration Practices and Procedures*, 38 Alb. L. Rev. 498, 511 (1974); Note, Hellerstein v. Assessor of the Town of Islip: *A Response to Inequities in Real Property Assessments in New York*, 27 Syracuse L. Rev. 1045, 1061 (1976).

violate applicable state and federal constitutional provisions.[11]

In *Allegheny*, 488 U.S. 336 (1989), this Court considered for the first time whether a welcome stranger property tax assessment system that resulted in gross disparities among similarly situated properties and taxpayers violates the Equal Protection Clause. There, between 1975 and 1986, the Webster County assessor made minimal across-the-board adjustments in the assessments of properties that had not been recently sold, raising assessed values on these properties by only 10% in 1976, 1981, and 1983, respectively. Upon sale, however, the assessor uniformly reassessed properties to current market value based upon the declaration of value filed at the time of transfer. Over time, this scheme "resulted in gross disparities in the assessed value of generally comparable property." *Allegheny*, 488 U.S., at 338. The petitioners' properties, for example, were assessed and taxed at roughly 8 to 20 and 35 times, respectively, that of comparable properties. 488 U.S., at 341.

Although the West Virginia Supreme Court of Appeals ruled that the assessor's welcome stranger practice did not violate state law, this Court unanimously

[11] *See, e.g., Township of West Milford v. Attorney General of New Jersey*, 120 N.J. 354, 361, 576 A.2d 881, 885 (1990) (township's "very undesirable" welcome stranger assessment practice violates state and federal equal protection guarantees); *Krugman v. Board of Assessors of the Village of Atlantic Beach*, 141 A.D.2d 175, 533 N.Y.S.2d 495 (1988) (selectively reassessing only recently sold properties serves no legitimate governmental purpose and has no rational basis); *Duval v. City of Manchester*, 111 N.H. 375, 286 A.2d 612 (1971) (invalidating inequitable reassessment of plaintiff's recently bought property, while 50% to 60% of all other property had not been reassessed for 20 years). *See also* 1978 Idaho Att'y Gen.' Ops. 148 (proposed voter initiative providing for a welcome stranger reassessment scheme is "patently and impermissibly discriminatory" in violation of state constitution).

held that it violated the Equal Protection Clause. Writing for the Court, the Chief Justice acknowledged that the States have broad powers to impose and collect taxes and may "divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." 488 U.S., at 344, citing *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526-27 (1959). But in Webster County's welcome stranger scheme, the Court could find no legitimate classes or distinctions based on "reasonable consideration of difference or policy." 488 U.S., at 344-45.

The Court stressed that "the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." 488 U.S., at 346. Webster County's assessment practices forced one group of disfavored taxpayers (new buyers) to pay taxes on current full market values based on their acquisition prices. In contrast, another otherwise indistinguishable and "similarly situated" group (existing owners) paid far lower taxes based on infrequent across-the-board reassessments that were woefully inadequate to "equalize the differences in proportion between the assessments of a class of property holders." 488 U.S., at 343. The defect in this practice was not that one method of appraisal (review of recent deeds) was used for one group and a different method (periodic across-the-board adjustments) for the other group. Rather, the constitutional flaw was that the assessor's across-the-board adjustment policy was not, by any means, designed to equalize assessments within comparable classes of taxpayers over a short, transitional period of time. The assessor's practices thus failed to meet the federal constitutional requirement — the "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." 488 U.S., at 342-43.

B. California's Welcome Stranger Property Tax System Not Only Precludes the "Seasonable Attainment of a Rough Equality" Between Similarly Situated Taxpayers, It *Guarantees* Increasing Inequities Between Such Taxpayers.

Article XIII A's operation is nearly identical to the Webster County assessment method. As in Webster County, California bases property assessments on fair market value as of the most recent date of purchase. And, like the Webster County system, Proposition 13 drastically limits annual increases in assessments, 2% in California and approximately 3% in Webster County (10% every three years), until the property changes ownership.

The result, under both systems, is that the property of long-time owners is assessed at dramatically lower levels than recently purchased property. Indeed, because it is imposed by legislative mandate now fixed in the State Constitution, Article XIII A operates in a more inflexible, even more harshly discriminatory way than the Webster County system invalidated in *Allegheny*. In West Virginia, assessors at least possessed the discretion to equalize tax assessments, although the Webster County assessor chose not to exercise that discretion. In California, by contrast, Proposition 13 freezes forever the maximum annual adjustment at a scant 2% — a figure apparently chosen for its political appeal, rather than having any theoretical or practical nexus to projected levels of inflation or to projected needs for increased local government revenues. As a practical matter, Article XIII A's fixed constraints thereby make it impossible for local assessors *ever* to meet the constitutional standard of seasonably attaining rough equality among similarly situated taxpayers.

The inequitable neighbor-to-neighbor disparities resulting from Proposition 13 are already fully comparable to those resulting from the constitutionally deficient Webster County system, and will inevitably worsen. By 1989, disparities among owners of nearly identical homes in Los Angeles County commonly reached 10:1, 12:1, 15:1 and higher. *See* Appendix A1. Disparities among owners of virtually indistinguishable commercial, industrial and residential income (apartment) properties commonly reached similar levels, while disparities among vacant lots exceeded 25:1 and even 50:1 and more.[12] *See* Appendix A6, A7.

While the Proposition 13 disparities are comparable to those in Webster County and continue to increase, the inequitable shift in the tax burden that has already taken place is vastly larger than any in Webster County. In Los Angeles County, for example, homeowners with 1978 and earlier base years, who in 1989 comprised about half of all present owners, were paying only 5% of the $1.23 billion countywide increase in taxes imposed on single family residences over the 1978 tax levels, while post-1978 buyers, who comprised the other half of such owners, paid a staggering 95% of the increase. *See* Appendix A8-A10. The newest buyers are burdened most heavily, but post-1978 buyers as a group pay subsidies already totalling hundreds of millions of dollars annually

[12]Gross disparities like these have become so commonplace in Los Angeles County that the intermediate court readily took judicial notice of them. *Nordlinger*, Pet. App. A12. Similar disparities are now prevalent throughout California. *See, e.g., R.H. Macy & Co., Inc. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530 (1990), Petition for Certiorari, at 4. *See also Prop. 13: Bless It, Damn It*, San Francisco Examiner, February 11, 1990, at A-1; *Prop. 13: How Unkind a Cut?* San Jose Mercury News, May 15, 1988, at 14; *Solutions Compound Inequality — Uneven Tax Burden Is Legacy of Reform*, Sacramento Bee, May 15, 1988, at A22.

to the highly favored owners with 1978 and earlier base years.[13] Proposition 13 subjects commercial, industrial and apartment properties to similar shifts. These shifts force new businesses to pay huge annual subsidies to their long-established competitors.

Furthermore, unlike Webster County, California has added exceptions to the reassessment-upon-transfer provision of Article XIII A that vastly compound its discriminatory impacts. Section 2(a) allows California homeowners over 55, who sell their principal residences (and realize their gains), to carry their low base year assessments with them to any replacement residences. Moreover, section 2(h) exempts from the change-of-ownership provision any transfer of a principal residence

[13]A similar phenomenon has occurred statewide. By 1988, about 2 million homes statewide still retained a 1975 base year — about 44% of all owner-occupied residences. Owners of these homes paid only about $1.05 billion in property taxes in 1988-89, or only 25% of the total paid by homeowners. The remaining 2.5 million homeowners (the 56% who bought after 1975) paid $3.15 billion, or 75% of the total taxes paid by homeowners. *See* California Senate Commission on Property Tax Equity and Revenue, *Report to the Legislature* (1991) (hereinafter "1991 Senate Commission Report"), at 33. If the long-time owners had paid their fair share, or 44% of the total $4.2 billion, their taxes would have been higher by $800 million. Because owners with 1976-78 base years also enjoy subsidies, the total subsidy from post-1978 buyers to pre-1978 owners of owner-occupied residential housing approached $1 billion, and $3 billion for all types of property.

from parent to child, and up to $1 million of the assessed value of any other property.[14] Together, the exemptions permit persons who owned California property in the mid-1970s and ensuing years to retain their artificially low assessed values (and correspondingly low property taxes) indefinitely into the future, even as they move freely around the state once they attain age 55, and then pass their tax advantages on to succeeding generations in perpetuity. Thus, well into the next century and beyond, Article XIII A establishes privileged "castes" of favored property owners, whose highest tiers of membership extend only to those fortunate enough to have parents, grandparents and/or great-grandparents who were landowners in Proposition 13's early years.

Despite the nearly identical operation of Article XIII A and the Webster County assessment method, the court below attempted to distinguish them simply by labeling California's welcome stranger scheme an "acquisition value system," and by erroneously assuming that the legislature can, by bootstrap, simply declare otherwise similarly situated property owners to be in different "classes." *Nordlinger*, Pet. App. A20-A22. Calling the two systems different names, however, merely elevates

[14]The assessed value of the principal residence transferable to children without reassessment to current market value is unlimited. Because each parent may transfer up to $1 million in assessed value of business property, both parents together can transfer up to $2 million. The assessed value that can be transferred is determined, not by current values, but by the base year of acquisition. Thus, at 1989 values, which in Los Angeles County already averaged about 5 times more than 1975 values (J.A. 10, 35-38, 65), approximately $10 million in business property purchased in 1975 or earlier could be transferred from one generation to the next without any reassessment.

form over substance.[15] As this Court observed in *Allegheny*, in determining equality of tax treatment, "[i]t is not theory, but the impact . . . that counts." *Allegheny*, 488 U.S., at 344, quoting *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). Article XIII A's welcome stranger provisions were not grounded on any mysterious new-found "principle" of basing property taxes on acquisition values rather than fair market values. *See State Board of Equalization v. Bd. of Supervisors*, 105 Cal.App.3d 813, 164 Cal.Rptr. 739 (1980) (Article XIII A is only a limit on California's pre-existing market value *ad valorem* system, not a new system). Proposition 13 and the Webster County system both simply overlay a cap on future tax assessment increases for existing owners onto the pre-existing *ad valorem* property tax, coupled with routine revaluation of assessments for new buyers to full current market values.[16]

Further, the court below improperly assumed that the legislature could "declare" that every property owner is in a different acquisition value "class," because he or she acquires land in a unique transaction at a unique point in time. The court reasoned that, unlike *Allegheny*, where all taxpayers were in the "same class" under its

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[15] *See* California Senate Office of Research, *California's Tax Burden: Who Pays?* (1990) (hereinafter "1990 Senate Office of Research Report"), at 72 ("The Webster County assessment system is strikingly similar to California's property tax system."); 1991 Senate Commission Report, at 32 ("Aptly, [section 2(a) of] Article XIIIA has been called the 'welcome stranger' provision.").

[16] Section one of Article XIII A expressly states that "[t]he maximum amount of any *ad valorem* tax on real property shall not exceed [1%] . . . ," and, under it, the property tax itself remains an *ad valorem* tax, *i.e.*, a tax based on assessed values. Section two then places a ceiling of 2% on annual increases in the assessments underlying the *ad valorem* taxes that can be imposed on existing owners, and provides for reassessment to full market value for new buyers.

current market value system, Article XIII A legislatively creates a unique acquisition value "class" for each taxpayer to pay taxes based on "each owner's assessment," thus permitting the gross disparities found impermissible in *Allegheny*. *Nordlinger*, Pet. App. A22. This Court has rejected similar "bootstrap" arguments in the past.

> A State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own bootstraps. "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes."

Williams v. Vermont, 472 U.S. 14, 27 (1985), quoting *Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966). The erroneous conclusion of the court below would effectively allow any state to draw any discriminatory classifications it likes — no matter how harsh — merely on the ground that the favored and disfavored taxpayers are legislatively deemed to be "different."

C. Under the Equal Protection Clause, the Validity of a Classification Depends Entirely on Whether the Classification Is Rational; Thus, the Legislative Status of Proposition 13 Does Not Exempt It From This Court's *Allegheny* Holding That Welcome Stranger Systems Are Unconstitutional.

In its *Allegheny* decision, this Court left open whether the manner in which the Webster County and California systems were adopted has constitutional significance:

> We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as Proposition 13.

Allegheny, 488 U.S., at 344 n.4. Since the welcome stranger schemes of Webster County and of California are functionally identical, *Allegheny* controls this case unless the distinction between an "aberrational enforcement policy" and a formal state policy embodied in law has constitutional significance under the Equal Protection Clause. And indeed, this was the sole basis the court below offered for distinguishing *Allegheny*: "[*Allegheny*] merely prohibits the arbitrary enforcement of a current value assessment method." *Nordlinger*, Pet. App. A3 (emphasis omitted). The intermediate court offered no explanation of why it considered this to be of constitutional significance. This Court's decisions dictate that the distinction could have no constitutional relevance.

Under the Equal Protection Clause, the validity of classifications drawn by the states depends entirely on whether the classifications are rational or irrational, neutral or invidious. It does not matter whether the classifications are drawn by administrative officials, state legislatures, or the people in a referendum. Nor does it matter whether classifications drawn by state officials are authorized by, prohibited by, or tolerated by, state law. If a discriminatory policy instituted by low-level officials as a matter of administrative practice violates the Equal Protection Clause, it follows that the same policy must violate the Clause even if instituted

by the highest authority in the state. As this Court noted in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352 (1918), the purpose of the Equal Protection Clause is "to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *See also Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 736-37 (1964) ("the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance"); *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 448 (1985) ("[i]t is plain that the electorate as a whole, whether by referendum or otherwise, could not order. . . action violative of the Equal Protection Clause"). Contrary to the court decision below, the same equal protection standards apply to Article XIII A as apply to the practices of the Webster County assessor regardless of whether the Webster County policy was authorized by West Virginia state law.

The welcome stranger policy was struck down in *Allegheny* because it discriminated against owners of recently purchased property without any reasonable justification — not because the assessor's policy lacked affirmative sanction in state law. The same policy does not gain in rationality just because it was adopted in another state through a different procedure. It follows that California's welcome stranger policy deserves the same fate as Webster County's. That West Virginia purported to follow "a current value assessment method" (but does not, at least in Webster County), while California law on its face requires the discriminatory policy, is without constitutional significance.

The court of appeal's supposed distinction of *Allegheny* cannot be squared with this Court's decisions

in *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940), and *Snowden v. Hughes*, 321 U.S. 1 (1944). In *Browning*, a state agency assessed railroad property at full market value, while locally elected assessors systematically assessed all other property "at far less than its true worth." 310 U.S., at 366. This appeared to conflict with the state constitutional requirement of equal taxation of all property in the state at full value. On an equal protection challenge brought by the railroad taxpayers, however, this Court upheld the discriminatory administrative practice:

> [S]o far as the Federal Constitution is concerned, a state can put railroad property into one pigeon-hole and other property into another, . . . [Thus] the only question relevant for us is whether the state has done so. If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous.

Id. at 369. Since the Equal Protection Clause does not prohibit states from taxing railroads more heavily than other property (such an argument would be "frivolous"), the Court deemed it irrelevant whether such a discrimination was authorized under state law. For federal purposes, it could have been; and that is all that matters. By the same token, the Court's decision in *Allegheny* that taxation of newcomers at a higher rate than long-time property owners is unconstitutional was based solely on the irrationality of the discrimination and not on whether it was authorized under West Virginia state law.

Similarly, in *Snowden* a party made an equal protection challenge to an action of the State Primary

Canvassing Board that arguably violated state law. This Court held that the action did not violate the Equal Protection Clause, on the ground that a similar action, if required by the legislature, would have been constitutional. "[T]he action of the Board is . . . subject to constitutional infirmity to the same but no greater extent than if the action were taken by the state legislature. . . . Its illegality under the state statute can neither add to nor subtract from its constitutional validity." *Snowden*, 321 U.S., at 11.

Browning and *Snowden* definitively demonstrate that in determining whether a classification scheme comports with equal protection, the pertinent issue is not whether the state has legislatively created or sanctioned the classification. Instead, the sole inquiry is whether the discriminatory classification violates federal equal protection principles. If, as in *Browning* and *Snowden*, the administrators' classification scheme does *not* offend the Federal Equal Protection Clause, then it is constitutionally irrelevant that the state legislature or voters may have chosen to forbid such discrimination. Conversely, if as in *Allegheny* the classification scheme does violate the Equal Protection Clause, it is constitutionally irrelevant that a state legislature has sought to sanction such discrimination, as the voters have attempted to do in California in enacting Proposition 13.

The court of appeal's apparent conclusion — that an action by an administrative official that would be constitutional if authorized by state law becomes unconstitutional if not authorized by state law — would radically transform the relations between federal courts and state law. In *Stern v. Tarrant County Hosp. Dist.*, 778 F.2d 1052 (5th Cir.1985) (*en banc*), *cert. denied*, 476 U.S. 1108 (1986), an analogous case, the Fifth Circuit

rejected an argument that discrimination by a county hospital district against osteopaths violated the Equal Protection Clause, notwithstanding the fact that such discrimination was contrary to state statute. *Id.* at 1054-55. Judge Higginbotham, writing for an *en banc* court, reasoned:

> When a legislature has a choice of means, each rationally related to its legislative purpose, it may constitutionally choose any of them. Its choice of one does not render the others irrational. It follows that acts violative of the chosen means, although by definition contrary to state law, are not *ipso facto* contrary to the fourteenth amendment. The constitutional test for rationality of a legislative classification, whether the classes be distinguished in the text of the law *or in its administration*, is whether *any* rational decisionmaker could have so classified.

Id. at 1056 (first emphasis supplied).

The *Stern* court rejected a contrary conclusion because it would inevitably transform every intentional violation of state law into a constitutional claim:

> If state law defines who is entitled to what treatment or which means to a chosen goal are rational, then all intentional violations of state law by state agencies would violate the fourteenth amendment: if the action were taken against a class it would offend equal protection . . . and if taken against an individual it would offend due process. . . .

Stern, 778 F.2d, at 1059. *See also Hoffman v. City of Warwick*, 909 F.2d 608, 623 (1st Cir. 1990) ("the fact that withholding enhanced seniority to newly employed

veterans was, at that time, contrary to state law did not transform an otherwise rational distinction into a violation of the Equal Protection Clause"); *Archie v. City of Racine*, 847 F.2d 1211, 1217 (7th Cir. 1988) (*en banc*) ("A state ought to follow its law, but to treat a violation of state law as a violation of the Constitution is to make the federal government the enforcer of state law. State rather than federal courts are the appropriate institutions to enforce state rules."), *cert. denied*, 489 U.S. 1065 (1989).

The court of appeal's reasoning below would also impermissibly and unnecessarily interject courts into decisions about whether a state administrator's actions comport with state law or policy. This Court has long resisted such interference with a state's enforcement of its own laws. *See, e.g., Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984) ("it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law"); *DeShaney v. Winnebago County DSS*, 489 U.S. 189 (1989); *Paul v. Davis*, 424 U.S. 693, 698-99 (1976). *See also* C. F. Abernathy, *Section 1983 and Constitutional Torts*, 77 Geo. L.J. 1441, 1449-50 (1989) ("Creation of a federal tort law that might displace state law ha[s] been a constitutional taboo since at least the time of the *Slaughter-House Cases* . . . .")[17]

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[17]Of course, individuals and groups who have been singled out for discriminatory treatment in violation of rights provided them by state law or policy, but where no independent federal constitutional right is implicated, are not without legal remedy. State law violations are appropriately remedied by state courts, acting within the power granted to them by state legislatures. To allow someone aggrieved by a state official who violates state law or policy to bring a constitutional challenge in federal court would render the states' capacity to tailor remedies to their unique circumstances meaningless.

The lower court's holding would allow a state to avoid the strictures of the Equal Protection Clause simply by voting to sanction an otherwise unconstitutional classification. The application of the Equal Protection Clause would vary from state to state depending upon the particularities of state law, so that railroads in Tennessee and osteopaths in Texas could sue to vindicate their rights to equal protection if state law required equal treatment of them, while railroads in Minnesota and osteopaths in New Mexico subject to laws that authorized differential treatment would have no similar constitutional claim.

No legitimate distinction can be drawn between the assessment policy struck down in *Allegheny* and that in this case. What was unconstitutional when instituted by the Webster County assessor is equally unconstitutional when instituted by the people of California. The lower court's attempt to evade the requirement set forth by this Court in *Allegheny* is without merit.

II.

NO "REASONABLE CONSIDERATION OF DIFFERENCE OR POLICY" UNDERLIES PROPOSITION 13'S GROSSLY DISCRIMINATORY IMPACTS.

Article XIII A cannot pass muster even under the most lenient standard of judicial review, because, as this Court determined in *Allegheny*, no rational basis justifies the welcome stranger method's arbitrary and discriminatory provisions. In *Allegheny*, the assessor and supporting *amici* unsuccessfully asserted that the Webster County welcome stranger system met the rational basis test, urging similar justifications to those relied on by the court of appeal below in upholding Proposition 13. This Court concluded, however, that

the system's discriminatory classifications and impacts did not rest on any "reasonable consideration of difference or policy." *Allegheny*, 488 U.S., at 343-45.

A. The Welcome Stranger Provision Arbitrarily Distributes Its Benefits and Burdens Without Regard to Actual "Ability to Pay."

The court below did not independently consider the justifications offered in support of Proposition 13, because it considered itself bound by the California Supreme Court's 1978 *Amador* decision upholding the measure. Pet. App. A17.[18] Shortly after Proposition 13 was enacted, the *Amador* court hypothesized that Proposition 13's then-new and untried scheme "may operate on a fairer basis" than a current value system because

> [an existing property owner's] future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. [Conversely, a new buyer's higher assessments and taxes are] predicated on the owner's free and voluntary acts of purchase.

Amador, 22 Cal.3d, at 235, 583 P.2d, at 1293. As the intermediate court here paraphrased: "[Article XIII A]

[18] In *Amador*, the equal protection claim and its possible justifications were little more than an afterthought. The litigation was filed directly in the California Supreme Court on June 7, 1978, the day after Proposition 13 was enacted. *See Court Tests Looming for Proposition 13*, Los Angeles Times, June 8, 1978, Pt. 1, at 1. The decision was rendered just three and a half months later. The complaint was a sweeping facial challenge to Proposition 13 in its entirety on a variety of grounds, with the equal protection claim meriting only three-and-one-half pages of an appendix to petitioners' brief. *See Amador*, Petitioners' Memorandum of Points and Authorities, Appendix B, at 106-09.

protects taxpayers from being assessed on the appreciated but unrealized value of their real property." Pet. App. A26.[19] Apparently by "fairness" in this context, the California courts suggest that Proposition 13's assessment provisions more closely approximate a taxpayer's ability to pay than do assessments under a current market value system.

Even a moment's reflection reveals the emptiness of this supposed justification. For all property owners, the ability to pay taxes varies enormously over time. What one person could afford at one time has nothing to do with what he or she can afford 10, 20 or 30 years later — or indeed what his or her children or grandchildren can afford 75, 100, or even 200 years later. Yet, Article XIII A freezes into perpetual legal effect a system that assumes that what a person (and successive generations) can afford to pay, year after year, in property taxes is forever dependent on what he or she was able to pay for a piece of property at a particular moment in the past. This is obviously a legal fiction of the highest order — a fiction to which no California court has given serious attention as a justification for Proposition 13, since actual disparities have developed and in light of *Allegheny*.

Furthermore, fully two thirds of the value of all taxable real property statewide is business, commercial,

[19]The Webster County assessor and supporting *amici* in *Allegheny* asserted similar justifications for their welcome stranger scheme. *See Allegheny*, Respondents' Brief, at 30, n.23; *Allegheny*, Brief for the National Ass'n of Counties *et al.* as *Amicus Curiae* in Support of Respondent, at 11.

industrial, and residential income (apartment) property.[20] Such sites are valuable because they generate rental income, or, if owner occupied, they save the business the expense of rent. The current market value of these business properties directly reflects their owners' ability to pay, while what these owners happened to pay to acquire them many years ago has no connection at all to their owners' current circumstances. Proposition 13's application to them is irrational and manifestly unfair.[21]

For residential property, Proposition 13 creates inequities that are perverse. Rather than being based on ability to pay, by its design Article XIII A systematically *ignores* that critical factor. Long-time owners of the most luxurious mansions in the wealthiest neighborhoods have become so advantaged by Article XIII A that they now pay lower taxes than recent buyers of humble bungalows in the poorest parts of Los Angeles County. This is shown vividly in the contrasting photographs of the two homes at p. 6 of this brief. Furthermore, the mortgage payments of long-time homeowners are typically much lower than those of new homebuyers, and make up a lower percentage of their income than what newcomers must devote to these payments. Indeed, long-time homeowners now typically

[20]*See* 1990 Senate Office of Research Report, at 87-88 (showing the statewide share of new assessed value and property taxes paid by business properties holding at a steady 66.2% to 69% during the ten-year period between 1979 and 1989). *See also* 1991 Senate Commission Report, at 26, 36 (63% of Proposition 13's 1978 rollback of assessments to 1975-76 base years was comprised of business property).

[21]Business property owners directly compete with each other. Imposing vastly different property taxes on stores in comparable locations, for example, when those taxes have no connection to the value of the property, distorts the market, is unfair to the property owners and their tenants, and ultimately hurts customers. Marginal enterprises, carrying the property tax burden of others, are forced out of business, and competition is lessened.

own a great deal of equity in the properties they purchased years ago, whereas new buyers usually have relatively less equity in their homes. Yet long-time owners pay a mere fraction of the taxes paid by new homeowners based on a justification that often actually has an inverse relationship to ability to pay.

This is not to say that the pre-Proposition 13 system did not place a strain on some homeowners when rapid property appreciation outstripped inflation, causing taxes to outpace income. But Proposition 13 responded to this problem with an assessment system that distributes its benefits and burdens in a manner that has utterly no connection to who was harmed under the old system. The welcome stranger system showers benefits on both those able to pay and those not able to pay who simply had the good fortune to buy their homes before 1978. All of those early buyers are legislatively deemed less able to pay, and thus are taxed less, than all families buying homes of comparable value in more recent times, no matter how financially strapped any such recent homebuyers may be. Beyond establishing its 1% overall cap on taxes, any benefits Proposition 13 bestows on taxpayers not actually able to pay their taxes is purely coincidental.

If the ability-to-pay problems of fixed income taxpayers are the issue, there exist familiar methods used by most states to target relief. For example, the property tax forgiveness and tax deferral programs long available in California (and many other states) for seniors and others on fixed, low incomes could easily have been

expanded.[22] Broad-based property tax limitation alternatives that provide relief equitably to all taxpayers are also readily available. For example, Los Angeles County in 1989 could have raised the same amount of revenue as Proposition 13 provided from residential property by assessing such property at current market value and lowering the overall rate from 1% to just .44%. J.A. 36-37, 72-73.[23] Given this easy availability of alternatives, "the choice of a proxy criterion . . . cannot be so casual as this, particularly when a more precise and direct classification is easily drawn." *Williams v. Vermont*, 472 U.S., at 24 n.8. But Proposition 13 has instead improperly swept all California real property into its welcome stranger scheme, imposing grossly disproportionate taxes and forcing massive tax shifts and subsidies from all newcomers to all long-time owners, whether they are actually able to pay or not.

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[22]California already has tax assistance programs for those taxpayers whose household income is less than $20,000. *See* Cal. Rev. & Tax. Code § 20514 (West Supp. 1991). The State also allows all taxpayers who are at least 62 years old, blind or disabled and have household incomes of $24,000 or less to postpone payment of their taxes until the property is sold. *See* Cal. Rev. & Tax. Code § 20585 (West Supp. 1991).

[23]Because Los Angeles County homeowners with pre- and post-1978 base years are roughly divided fifty-fifty (J.A. 37), the median effective tax rate presently is approximately what homeowners with 1979 base years are paying. In practical terms, for a median priced home of about $225,000, the taxes of a recent buyer would plunge from about $2,250 to about $990, 44% of the present tax, or a savings of about $1,260 annually. The taxes of a 1975 base year owner of the same currently valued home would rise from $450 to about $990, an increase of $540. J.A. 37. Notably, this adjustment is not much more than the approximately 38% real dollar tax cut that the 1975 base year owners of median-priced homes have received since 1978. J.A. 27.

B. That Proposition 13 May Permit a Taxpayer to Predict His or Her Property Taxes Does Not Justify the Imposition of a Discriminatory Tax System.

The intermediate court also suggested that Proposition 13's discriminatory provisions promote certainty and predictability: "[Proposition 13] allows each property owner to estimate future tax liability with substantial certainty, . . ." *Nordlinger*, Pet. App. A14, citing *Amador*, 22 Cal.3d, at 235, 583 P.2d, at 1293.[24]

The quality of certainty in and of itself, however, does not make a tax system either rational or fair. Pursued without regard to other equitable factors, a "certain" tax system can be both discriminatory and unreasonable. For example, a system under which taxpayers whose street addresses have odd numbers were taxed a fixed amount five times that of taxpayers with even-numbered addresses would produce both complete certainty and total irrationality.

Moreover, even if predictability is a laudable goal, it in no way explains or justifies the *discrimination* Proposition 13 creates. The interest in certainty explains why the State might wish to adopt fixed valuations (as opposed to periodic revaluations), but it does not explain why everyone's value is not set as of the same year. Why should petitioner Nordlinger's fixed and certain level of taxes be five times the fixed and certain taxation level of her neighbors who live in nearly identical houses? This inherent discrimination among otherwise similar taxpayers is unaddressed by the predictability rationale.

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[24]This justification, too, was asserted in *Allegheny*, but apparently did not sway the Court. *See Allegheny*, Respondent's Brief, at 30, n.23; *Allegheny*, *Amicus Curiae* Brief of National Ass'n of Counties *et al.* in Support of Respondent, at 11.

Cf. Cleburne, 473 U.S., at 432 (State may have legitimate interest in preventing population congestion, but this does not in itself justify treating mentally handicapped group housing differently from other group housing).

C. No Rational Basis Underlies Proposition 13's Politically Expedient Attempt to Raise Revenue by Shifting the Overwhelming Burden of Property Tax Revenue Increases to Newcomers.

The intermediate court did not mention a third justification offered for Article XIII A, but the court of appeal in the *R.H. Macy* litigation, a similar case, did: "assurance of a stable source of revenue for the local governments." *R.H. Macy*, 226 Cal.App.3d, at 362, 276 Cal.Rptr., at 536. The Jarvis/Gann Committees' *amicus* briefs below explicitly articulated this final justification. Because existing owners wished to limit their future tax increases to only 2% annually, while continuing to enjoy a high level of public services without paying for them, Proposition 13's authors drafted it to provide that the great majority of all future increased levels of taxation would be paid by new buyers.[25]

One has to admire their candor. This argument reveals the naked political calculation behind enactment of Proposition 13's welcome stranger provision in the 1978 election. In plain language, this justification can be restated: "Heaping higher taxes on as-yet-unidentified taxpayers is the only way to keep *our* taxes down and *our* services up." Fully two-thirds of those who voted in June 1978 were existing California homeowners. This self-interested group overwhelmingly voted in favor of

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[25]*Nordlinger* v. *Lynch*, Brief of Howard Jarvis Taxpayers Ass'n and Paul Gann Citizens Committee as *Amicus Curiae* in Support of Respondent, filed with the California Court of Appeal, at 6, 7-8, 39.

the proposition.[26] The same self-interest, of course, doubtless motivated the Webster County voters who repeatedly re-elected their assessor throughout more than 10 years of welcome stranger implementation in that West Virginia locality — as well as voters throughout America who vote for assessors using similar inequitable assessment schemes. But this is obviously not a legitimate basis for discrimination. "The objective of achieving political support by discriminatory means . . . is not one which the Constitution recognizes." *Cole v. Housing Authority of the City of Newport*, 435 F.2d 807, 813 (1st Cir. 1970).

Not only does Proposition 13 sever the nexus between property taxes and ability to pay, but, according to the Jarvis/Gann explanation, it was purposely designed to eradicate any nexus between the benefits received from public services and the burden of paying for them, the other traditional rationale underlying property taxes.[27] Thus, the benefits of increased public services are shared by existing homeowners and new buyers, yet, in 1989, by Proposition 13's design, post-1978 homebuyers in Los Angeles County (only one-half of the total) were forced to pay for fully 95% of the $1.23 billion increase in property tax revenues over 1978 levels that paid for those services.

Distinctions between the taxes imposed on newcomers and long-time residents cannot be justified under the

[26]Two-thirds of the voters who voted on June 6, 1978 owned their own homes. Existing homeowners who had no public employee in their households voted 81% in favor of Proposition 13. *See Inflation, Not Anger Against All Government*, Los Angeles Times, June 11, 1978, Pt. VI, at 1.

[27]The long-standing benefit rationale for *ad valorem* taxation postulates that public services contribute to the value of property and therefore should be proportionately paid for by the owners according to value. R.A. Musgrave and P.B. Musgrave, *Public Finance in Theory and Practice* (2d ed. 1976), at 343-49.

rational basis test by the "simple desire to raise funds" (*Williams v. Vermont*, 472 U.S., at 25), especially where the demands on public services imposed by the two groups are similar. The Webster County assessor, too, unsuccessfully asserted that the need to raise revenue justified the welcome stranger system's distinctions between long-time owners and new buyers.[28] Like the other justifications, the revenue raising rationale in no way explains why newcomers should shoulder this harshly disproportionate tax burden. Equal protection analysis must answer the question "[w]hat is the characteristic of the *disadvantaged class* that justifies the disparate treatment?" *Cleburne*, 473 U.S., at 453 (Stevens, J., and Burger, C.J., concurring) (emphasis supplied).

Proposition 13's welcome stranger scheme imposes huge tax penalties on new buyers simply to raise revenue in a politically expedient manner. The other justifications merely camouflage this purpose. They provide no rationale whatsoever for the discriminatory aspects of Proposition 13, and thus fail to withstand an even minimal rational basis scrutiny.

III.

PROPOSITION 13 SHOULD BE SUBJECTED TO HEIGHTENED SCRUTINY BECAUSE IT DISTRIBUTES BENEFITS AND BURDENS BASED ON SENIORITY OF HOMEOWNERSHIP, THUS ERECTING A "BARRIER TO MOVEMENT" THAT VIOLATES THE RIGHT TO TRAVEL.

Discrimination against newcomers is treated with disfavor under the Equal Protection Clause, both

[28]In *Allegheny*, the Webster County assessor argued that the welcome stranger classification's "distinctions . . . are rationally related to the furtherance of the legitimate public purpose of obtaining tax revenues needed for county governments and school districts. . . . " *Allegheny*, Respondent's Brief, at 29.

because it penalizes the constitutional right to travel and because it allows the politically dominant class of current residents to take advantage of politically under-represented groups. These factors, in turn, lead the Court to apply heightened scrutiny. Article XIII A raises both of these concerns.

California's effort to make property tax liabilities depend largely on seniority of property ownership — particularly when homeownership is involved — is closely analogous to the scheme struck down by this Court in *Zobel v. Williams*, 457 U.S. 55 (1982). There, Alaska distributed its excess oil revenue to each resident based on one dividend unit worth $50 for each year of residency after 1959, the year Alaska became a state. The Alaska plan initially and continually favored long-time residents over newer residents, creating classes back to 1959 and another disfavored newcomer class every year. According to the Court, the distribution plan impermissibly created "fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." *Id.* at 59. In an oft-cited passage, the Court stated:

> If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence — or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? *Could states impose different taxes based on length of residence?* Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. *It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible.*

Id. at 63-64 (emphasis added).

The Court in *Zobel* determined that the Alaska scheme did not meet even minimal rational basis scrutiny. Significantly, however, five of the concurring Justices further concluded that heightened scrutiny was appropriate, because, in addition to its equal protection flaws, the scheme potentially burdened the federal constitutional right to travel.

Justice O'Connor emphasized the "continuous disability" the Alaska scheme placed on new residents:

> Alaska forces nonresidents settling in the State to accept a status inferior to that of oldtimers. . . . In effect . . . , the State told its citizens: "Your status depends upon the date on which you established residence here. Those of you who migrated to the State cannot share its bounty on the same basis as those who were here before you". . . . Each group of citizens who migrated to Alaska in the past, or chooses to move there in the future, lives in the State on less favorable terms than those who arrived earlier.

Id. at 75.

Four of the Justices emphasized that, by allocating public benefits and burdens on the basis of seniority of residency, the Alaska scheme significantly interfered with our federal system, and therefore infringed the constitutional right to travel.

> [I]f each State were free to reward its citizens incrementally for their years of residence, so that a citizen leaving one State would thereby

> forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

Id. at 68. In practical effect, such schemes establish an "aristocracy" with exclusive privileges, in direct contravention of the Constitution's equal protection premise that even the newest citizen should be on an equal legal footing with those "able to trace their lineage back for many generations within the State's borders." *Id.* at 69, 70 n.3.[29]

The California welcome stranger tax assessment scheme shares many of these constitutional defects. It creates ever-increasing numbers of fixed, permanent and disfavored classes of otherwise indistinguishable citizens, based merely on the length of time they have owned property within the state. The Assessor candidly acknowledged this below when he stated:

> All properties transferred on the same date are reassessed on that date. Hence, classification is made based on date of purchase — *each day a new class is created of the properties subject to reassessment because of transfer and completed new construction.* The properties within each class are treated equally, each is assessed at fair market value as of the date its class is formed.

[29] *See also Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 624 (1985) (statute's durational residency requirement impermissibly created "fixed, permanent distinctions . . . between . . . classes of concededly bona fide residents," by providing a $2,000 annual property tax exemption to soldiers who served in the Vietnam War and who were state residents before a certain date); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (statute that awarded a one-time civil service employment preference to veterans who were also state residents on a certain date violates right to travel).

Respondent's Brief at 10 (emphasis added). Proposition 13 thus runs afoul of the *Zobel* ruling that it is "clearly impermissible" for a state to divide its citizens into "expanding numbers of permanent classes," with each newcomer group being more disfavored than the last. *Zobel*, 457 U.S., at 64.

Moreover, Article XIII A, like the Alaska scheme, over time produces an aristocracy or privileged taxpaying caste of those who came to California and owned property relatively early and their descendants.[30] Those who migrate to the state later in time are permanently barred from sharing the taxpaying burdens on the same favorable terms as those who resided here and bought their homes and other property first. Indeed, all newly arriving homebuyers must heavily subsidize, for an indefinite and very lengthy period, the property taxes of California's long-established homeowners.

Proposition 13 also establishes huge tax advantages to long-time California homeowners so that, if they sell their homes in non-exempt transactions and relocate to a different home, county or state, they forfeit their accrued seniority. The harsh tax penalties imposed on non-exempt transfers of California real property already constitute a substantial deterrent to favored taxpayers

[30] The 1991 Senate Commission Report strongly condemned the section 2(h) exemption for transfers from parent to child:

> This exemption can be used repeatedly and indefinitely, forestalling a market reassessment forever. The inequity is clear. . . . Not only does [it] offend a policy of equal tax treatment for taxpayers in similar situations, it appears to favor the housing needs of children with homeowner-parents over children with non-homeowner-parents. . . . [T]his remarkable disparity of treatment perverts even the strongest arguments in behalf of the acquisition method of assessment. . . .

1991 Senate Commission Report, at 9-10.

with 1978 and earlier base years to sell their property and forfeit their preferred status. As disparities increase and the penalty on non-exempt transfers becomes more onerous, the incentive to retain low 1978 and earlier base years will be even higher than it is today.[31]

The only arguably significant difference between the instant case and *Zobel* is that California makes seniority of *property ownership*, rather than seniority of *residency*, the defining characteristic for how its property taxpaying benefits and burdens are allocated. The intermediate court distinguished *Zobel* solely on this ground. Pet. App. A24.

The court below, however, ignored the close relationship between homeownership and residency. Length of homeownership is a sufficiently close proxy to length of residency that the same constitutional concerns should apply. The term "travel" has historically been used by the Court to mean migration with the intent to "settle and abide." *E.g., Memorial Hospital v. Maricopa County*, 415 U.S. 250, 255 (1974). For most

[31]The exemptions from Article XIII A's reassessment provision clearly violate the constitutional right to travel, as they are available *only* to California residents and their children.

The section 2(a) exemption for transfers of their principal residence by owners over 55 who purchase a replacement residence is unavailable to persons over 55 who sell their out-of-state principal residences and move to California to buy new homes. Those non-California residents must pay property taxes assessed at the high current market value of the newly bought homes. In contrast, California residents who sell their principal residences and buy new homes will pay less taxes. Unlike the non-California residents, they will be able to transfer the lower assessments from their former homes to their new replacement residences.

Similarly, the section 2(h) exemption for transfers of principal residences from parents to children is also only available to California residents. A child of a non-California resident who owns a house in California can inherit it only in a non-exempt transaction and will pay vastly higher taxes. But the children of California residents can inherit their parents' principal residences, retain low base year tax assessments and pay low taxes thereafter.

Americans, to settle and abide involves a key part of the American dream, homeownership. Homeownership's close relationship to residency is demonstrated by the fact that, as with other states, the vast majority of California single family homes are occupied by their owners, while, conversely, except for vacation and second homes, very few non-Californians own California homes.[32] Indeed, the only newcomers whose homes will ever receive Proposition 13's most favorable treatment are that tiny percentage who move to the state into a home they happen to have owned since 1975.

This Court has in the past looked at whether a criterion chosen by a state for classifying taxpayers is a close enough proxy for out-of-state residency to be subject to the same constitutional doctrines that involve residency. For example, in *Maricopa County*, 415 U.S. 250, the Court reviewed the validity of a one-year County residency requirement for non-emergency medical services in public hospitals. Notwithstanding that many of the effects on mobility were felt intra-state, as well as on out-of-state migrants, the Court determined that the County residency requirement was sufficiently close to a one-year State residency requirement that the constitutional right to travel analysis should apply. As in *Maricopa County*, the criterion used here (length of homeownership) to allocate benefits and burdens has both intra- and interstate impacts, but the constitutional

[32]Over 74% of all single family residences in the Los Angeles metropolitan area are occupied by their owners. Renters occupy 22% of the residences. The final 4% are vacant either because they are for sale, for rent, or are for seasonal use. U.S. Department of Commerce, Bureau of the Census, and U.S. Department of Housing and Urban Development, *American Housing Survey for the Los Angeles-Long Beach Metropolitan Area in 1985*, at 1.

concerns involved implicate the fundamental workings of our federal system. *Cf. United Bldg. & Const. v. Mayor and Council of Camden*, 465 U.S. 208 (1984) (city ordinance giving preference for public jobs to city residents infringed Privileges and Immunities Clause rights of out-of-state residents, even though it also discriminated against in-state citizens).[33]

Clearly, Proposition 13's onerous effects already "erect[] a real and purposeful barrier to movement, or the threat of such a barrier" *(Maricopa County*, 415 U.S., at 285 (Rehnquist J., dissenting)), and so infringe the right to travel. California recognized these barriers when it adopted Proposition 60, which established the section 2(a) exemption for persons over 55 who sell their homes and buy replacement homes. The ballot argument favoring the exemption explicitly recounted how older California homeowners face "huge property tax increases when they choose to sell their large family homes and move into new smaller residences" with the ensuing "property tax burden . . . now prevent[ing] many of them from finding affordable housing." Approving the exemption, the ballot argument maintained, would allow California's senior citizens "to improve their housing without being penalized by excessive taxation," thus

[33]In *Williams v. Zobel*, 619 P.2d 422 (Alaska 1980), the Alaska Supreme Court, reviewing the issues not taken up by this Court in *Zobel v. Williams*, 457 U.S. 55 (1982), invalidated a scheme whereby persons who had previously paid income tax to the state over several years were given increasing levels of exemption until no taxes were due after three years of payments. The court ruled that income tax payments to the State were a sufficiently close proxy to state residency that, for all practical purposes, the scheme put the principal burden of taxation on new residents. The statute would have totally exempted about 80% of Alaska's existing taxpayers from the start, leading the court to conclude that the scheme placed "the principal burden of taxation" on new residents. *Id.*, 619 P.2d, at 424, n.4.

restoring their "freedom to live where they choose."[34] Unfortunately, Proposition 60 neglected to provide that freedom of mobility to all others wishing to buy or sell their homes in California.

Indeed, the severe burden Proposition 13 imposes on the constitutional right to travel is most starkly demonstrated by envisioning a federal union in which Article XIII A has been upheld, and the other 49 states decide to implement similar systems.[35] A citizen of one state who had accrued years of homeowning "seniority" would have to forfeit that seniority if he or she moved to another state to buy a home. The newly relocated resident would thereupon become a member of the new state's most disfavored class, indefinitely forced to subsidize the property taxes of privileged, longer-established homeowners in that State. This kind of unimaginable barrier to movement throughout the 50 States is precisely the danger that more widespread use of Proposition 13's welcome stranger scheme poses.

Finally, this Court has long applied heightened scrutiny in right to travel cases because of the relative political powerlessness of newcomers.

> [N]on residents are not represented in the taxing State's legislative halls [so] judicial acquiescence in taxation schemes that burden

[34]Proposition 60 Ballot Pamphlet, Arguments of Proponents, at 34-35 (November 1986).

[35]*See, e.g., Williams v. Zobel*, 619 P.2d, at 429. where the Alaska Supreme Court observed:

> If we were to accept the state's argument, boroughs and cities in Alaska could begin granting [tax] exemptions in such a way that only newcomers would pay the costs of local government. Other states might decide to impose income tax surcharges on their new residents. Such a system would create a patchwork of tax havens for long term residents. Each time someone moved, he or she would face the prospect of "buying in" to a new community. Such a concept is more than an imaginary threat to the right to travel, and we conclude that it also violates our own constitutional right to equal treatment.

> them particularly would remit them to such redress as they could secure through their own State; . . . [The standard of review is thus] substantially more rigorous than that applied to state tax distinctions among, say, forms of business organizations or different trades and professions.

Austin v. New Hampshire, 420 U.S. 656, 662-63 (1975). Here, a very large, politically powerful group of 1978 property owners created a scheme under which they perpetually shifted the burden of projected tax increases onto future newcomers.[36] As a group, newcomers at any given moment constitute only a small fraction of the population, and are largely either unaware of their future status or are unable to protect themselves through political participation.[37] Furthermore, having successfully entrenched Article XIII A into the California Constitution, the self-interested 1978 majority has established a mandated scheme of discriminatory tax treatment that is virtually impossible to overturn. *See Nordlinger*, Pet. App. A27, n.11. Because the political system tilts so strongly against newcomers and new buyers alike, enforcement of their federal constitutional

[36]Some Justices have noted that the need for strict scrutiny is lessened where a small minority is benefitted by a durational residency classification and the disfavored group is treated no differently from the rest of the population, *Soto-Lopez*, 476 U.S. 898 (O'Connor J., and Stevens J., dissenting), a situation certainly not present here.

[37]Many commentators have suggested that initiatives should prompt more careful court scrutiny because their adoption circumvents many procedural safeguards that exist when legislation is enacted through the representative process. These safeguards work to protect minority interests through debate and compromise, the legislator's duties to represent all his or her constituents and to make informed decisions, and the executive branch check on legislative power. *See generally* J.N. Eule, *Judicial Review of Direct Democracy*, 99 Yale L.J. 1503 (1990); P. Gunn, *Initiatives and Referendums: Direct Democracy and Minority Interests*, 22 Urb. L. Ann. 135 (1981); Comment, *Judicial Review of Laws Enacted by Popular Vote*, 55 Wash. L. Rev. 175 (1979).

rights in the federal courts is their only realistic hope for relief.

The justifications asserted to support Article XIII A's welcome stranger system do not meet even minimal rational basis scrutiny. *A fortiori*, this scheme cannot pass a heightened level of scrutiny, and it violates the constitutional right to travel.

IV.
THE CALIFORNIA COURTS ARE THE APPROPRIATE FORUM TO CONSIDER RELIEF IN THE FIRST INSTANCE.

The issue before the Court is whether petitioner Nordlinger has stated a claim upon which relief can be granted, here in the context of a traditional state law demurrer, as modified by the intermediate court's judicial notice ruling. The question of what relief should be granted to remedy any constitutional defects in Article XIII A's welcome stranger system is not presently pending before this Court. When this Court rules that a state tax is unconstitutional, its practice is "to abstain from deciding the remedial effects of such a holding," and instead to entrust state courts with the "initial duty of determining appropriate relief," as a matter of federal-state comity. *American Trucking Ass'ns Inc. v. Smith*, __ U.S. __, 110 S.Ct. 2323, 2325, 2330 (1990) (collecting cases).

The California Legislature has already started a comprehensive evaluation of ways to restore equity to its property tax assessment system, in the event this Court holds that Article XIII A is unconstitutional. Blue ribbon citizen panels and expert studies have recommended a variety of alternatives focusing principally on so-called "revenue neutral" solutions. *See, e.g.*, 1991 Senate Commission Report, *passim*; 1990 Senate Office of Research Report, at 78. By reassessing all residential property up to current market value and then reducing

the tax rate, these revenue neutral systems would raise only the same amount of property tax revenue that is presently obtained under Article XIII A.

The Legislature is also studying various tax exemption and deferral proposals designed to target special relief to any early base year taxpayer who would experience difficulty with any equity-dictated increases. *See* 1991 Senate Commission Report, at 4-7, 23; 1990 Senate Office of Research Report, at 68. More technically, the legislature is also reviewing issues such as retroactivity, statutes of limitation, and escape assessments, so as to approach the normal remedial issues in an orderly way. *See e.g.*, Assembly Office of Research, *Legal Challenges to Proposition 13: Implications for California* (October 1991).

This Court should therefore hold unconstitutional Article XIII A's welcome stranger system, and then remand to the state courts the issues relating to determining appropriate relief.

CONCLUSION

The lower court decision should be reversed. This Court has already put to rest any notion that welcome stranger schemes embody any rational policy, yet their political irresistibility remains undeniable. The lower court's reasoning would allow states to override the fundamental principles of fairness and equity contained in the Equal Protection Clause simply by embedding an otherwise unconstitutional discriminatory system into its laws. Such a result cannot be countenanced.

Respectfully submitted,

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APPENDIX

TABLE 1

RESIDENTIAL PROPERTY TAX DISPARITIES THROUGHOUT LOS ANGELES COUNTY

CURRENT ASSESSMENTS OF COMPARABLE PROPERTIES 1989 PURCHASERS: PRE-1975 PURCHASERS

NEIGHBORHOOD	ASSESSMENTS
SANTA MONICA (Ocean Park)	17:1
VENICE (Walk Streets)	13:1
BEL AIR	13:1
SHERMAN OAKS	12:1
CERRITOS	12:1
ARCADIA	12:1
WESTWOOD	12:1
PACIFIC PALISADES	12:1
BEVERLY HILLS	12:1
W. LOS ANGELES (Rancho Park)	12:1
BRENTWOOD	11:1
HOLMBY HILLS	11:1
GLENDALE	11:1
EL MONTE	11:1
SOUTH GATE	11:1
SAN GABRIEL	11:1
GRIFFITH PARK	11:1
PASADENA	11:1
PALOS VERDES	10:1
LONG BEACH	10:1
ENCINO	10:1
SAN PEDRO	10:1
PALMS	10:1
SILVERLAKE	10:1
SANTA CLARITA	10:1
LOS ANGELES (Mid-City)	10:1
GRANADA HILLS	10:1
BOYLE HEIGHTS	10:1
POMONA	10:1
SUNLAND	10:1
EAGLE ROCK	10:1
MONROVIA	9:1
GLENDORA	9:1
HANCOCK PARK	9:1
LOS ANGELES (Coliseum Area)	9:1
MAR VISTA	9:1
HYDE PARK	9:1
PARK LA BREA	9:1
ALHAMBRA	9:1
WEST HILLS	9:1
LINCOLN PARK	9:1

[1]These ratios were determined based on a computer analysis of every property sold in Los Angeles County in the month of August 1989. For every sale, economist David Gold calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment).

Source: J.A. 66, 78.

TABLE 2

DIFFERENCE IN PROPERTY TAXES BETWEEN COMPARABLE HOMES IN SELECTED NEIGHBORHOODS

NEIGHBORHOOD[1]	CURRENT MARKET VALUE OF HOME	TAX ON NEW OWNER	TAX ON PRE-1975 OWNER[2]	RATIO OF TAX ON NEW OWNER TO TAX ON PRE-1975 OWNER
BEVERLY HILLS	$3,800,000	$38,000	$3,230	12:1
MANHATTAN BEACH	630,000	6,300	680	9:1
BALDWIN HILLS (Petitioner's Area)	210,000	2,100	360	6:1
COMPTON	90,000	900	180	5:1
WATTS	80,000	800	160	5:1

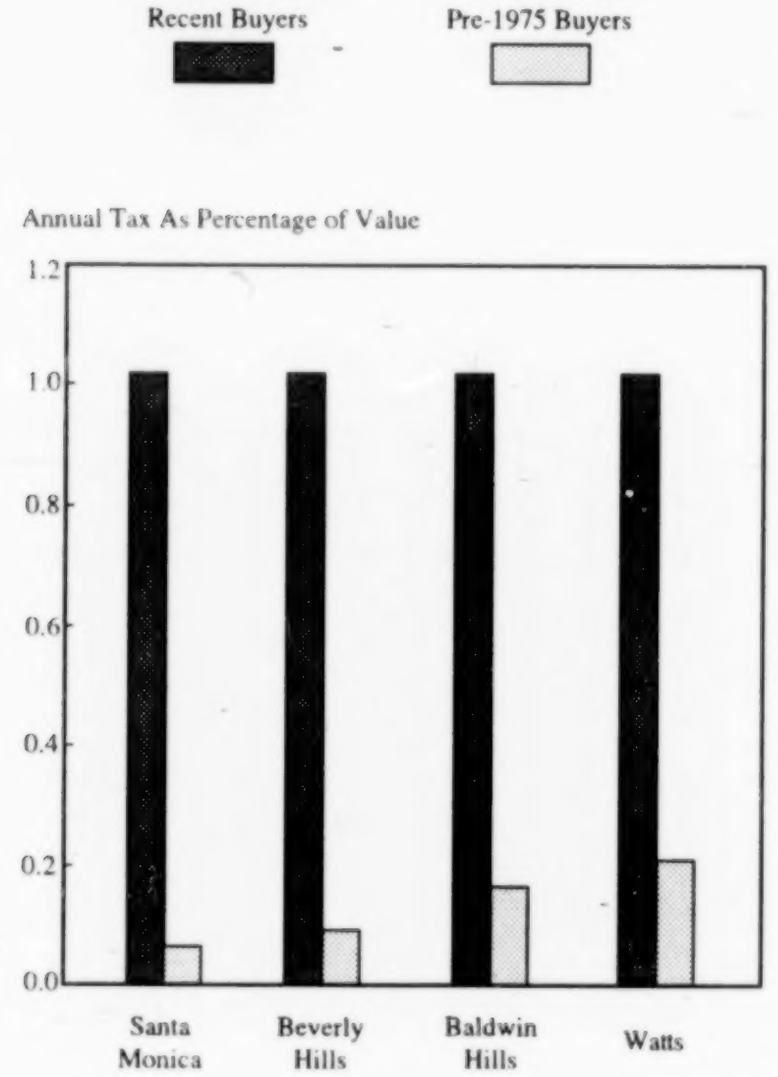
[1]Each neighborhood entry corresponds to an actual pair of homes displaying tax disparities between recent and long-time owners that are typical in their neighborhood for this class of home. In each instance, the home owned by a pre-1975 buyer was judged by a professional appraiser to be comparable with or superior to the corresponding recently purchased home. *See* J.A. 20-23.

[2]The taxes are calculated at the 1% rate; because rates to pay for voter approved indebtedness vary around the county, actual taxes may be slightly above 1%.

Source: J.A. 24.

FIGURE 1

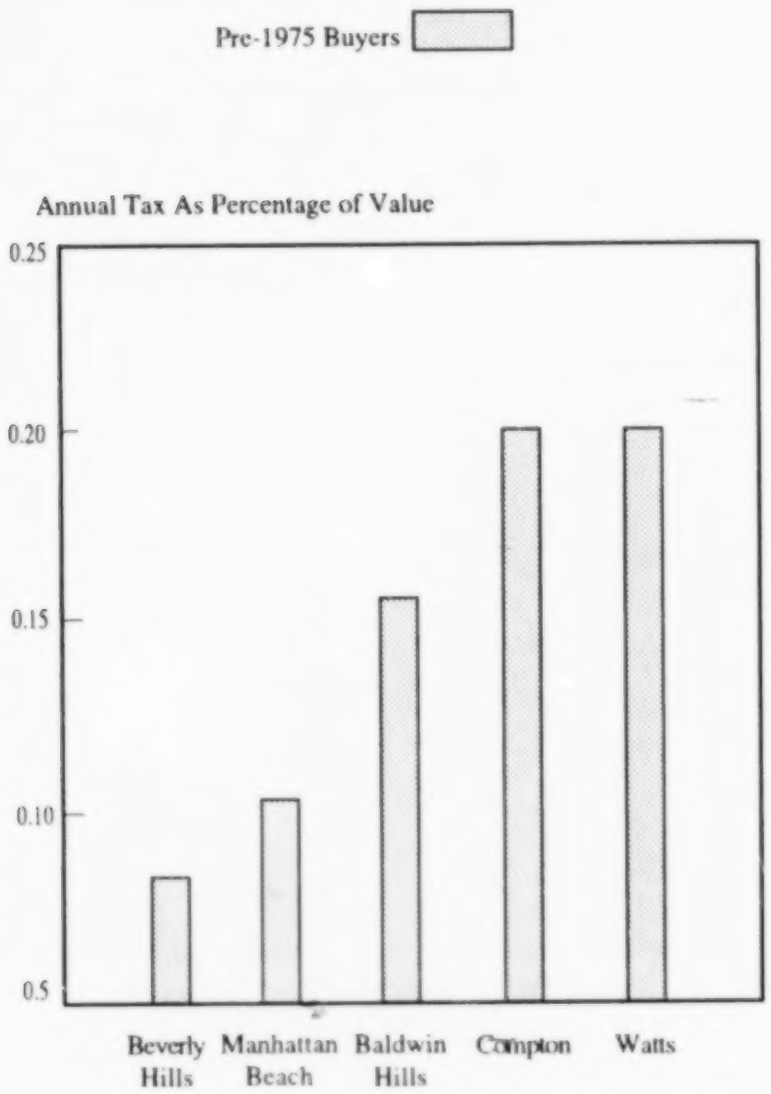
PROPORTION OF PROPERTY VALUE PAID IN TAX RECENT BUYERS COMPARED TO PRE-1975 BUYERS



(Based on Tables 1 & 2)

FIGURE 2

PROPORTION OF PROPERTY VALUE PAID IN TAX PRE-1975 BUYERS



(Based on Table 2)

TABLE 3

RATE AT WHICH TAX DIFFERENTIALS HAVE GROWN SINCE THE ARTICLE XIII A BASELINE YEAR, AND PROJECTED DIFFERENTIALS IN 10 MORE YEARS IN SELECTED NEIGHBORHOODS

	Annual[1] Growth Rate of Home Values	Annual[2] Growth Rate of Tax Differentials	Current Tax Differentials	Years Taken For Tax Differentials to Double	Projected Tax Differentials 10 Years From Now
VENICE	22.5%	20.1%	13:1	3.8	81:1
BEVERLY HILLS	21.1%	19.4%	12:1	3.9	71:1
MAR VISTA	18.3%	16.0%	8:1	4.7	35:1
BALDWIN HILLS (Petitioner's Area)	16.0%	13.7%	6:1	5.4	22:1
WATTS	14.4%	12.2%	5:1	6.0	16:1

[1]This column is based on the average rate at which home values have grown in each neighborhood since 1975.

[2]The growth rate of the tax differentials differs from the growth rate of the values of the properties because of the 2% annual adjustment allowed under Article XIII A.

Source: J.A. 25, 26.

TABLE 4

DISPARITIES IN TAXES PAID BY LONG-TIME AND RECENT OWNERS OF COMPARABLE VACANT LOTS IN LOS ANGELES COUNTY[1]

LOCATION	ANNUAL TAX ON LONG-TIME OWNER[2]	ANNUAL TAX ON NEW OWNER	PROPERTY TAX ASSESSMENTS BASED ON 1989 PURCHASE PRICE: PROPERTY TAX ASSESSMENTS BASED ON 1975-76 VALUES
PACIFIC PALISADES	$ 6.00	$3,500.00	583:1
PACIFIC PALISADES	10.00	2,600.00	252:1
BEVERLY GLEN CANYON/LA LAUREL	4.60	500.00	108:1
CANYON/LA	38.00	3,500.00	93:1
MALIBU	59.00	5,000.00	85:1
BEL AIR	66.00	3,450.00	53:1
LAUREL CANYON/LA	15.00	750.00	48:1
BEVERLY HILLS	51.00	2,400.00	47:1
BEVERLY HILLS	88.00	3,600.00	41:1
LAUREL CANYON/LA	46.00	1,300.00	28:1
LAUREL CANYON/LA	112.00	3,000.00	27:1

[1]Dollar figures have been rounded.

[2]Many vacant lots in Los Angeles County are presently taxed as little as $6.00 because in 1975, the year of their base year value, they were considered undevelopable. Today, by contrast, due to technological or legal changes, the lots are worth hundreds of thousands of dollars, an increase in valuation not subject to property taxation until the property changes ownership. *See Nordlinger*, Joint Appendix in Cal. Ct. App., Vol. III, at 594, 595.

Source: J.A. 68, 80-82.

TABLE 5

DISPARITIES IN TAXES PAID BY LONG-TIME AND RECENT OWNERS OF COMPARABLE COMMERCIAL, INDUSTRIAL AND INCOME-PRODUCING PROPERTY IN LOS ANGELES COUNTY

APARTMENTS NEIGHBORHOOD	RATIO[1]
BRENTWOOD	10:1
WEST HOLLYWOOD	9:1
HUNTINGTON PARK	9:1
ARCADIA	9:1
SOUTH GATE	9:1

OFFICE BUILDINGS NEIGHBORHOOD	RATIO
MONROVIA	8:1
SAN PEDRO	8:1
L.A. MID-CITY AREA	7:1
COMMERCE	7:1
COMPTON	7:1

LIGHT INDUSTRIAL NEIGHBORHOOD	RATIO
FLORENCE	11:1
PALMDALE	10:1
WATTS	9:1
EL MONTE	8:1
VAN NUYS	7:1

GARAGES NEIGHBORHOOD	RATIO
COMPTON	10:1
SOUTH LOS ANGELES	8:1
UNIVERSAL CITY	6:1
GLENDALE	6:1
DOWNTOWN LOS ANGELES	6:1

STORE BUILDINGS NEIGHBORHOOD	RATIO
CULVER CITY	11:1
DOWNTOWN LA	10:1
SOUTH GATE	9:1
GLENDALE	8:1
LONG BEACH	7:1

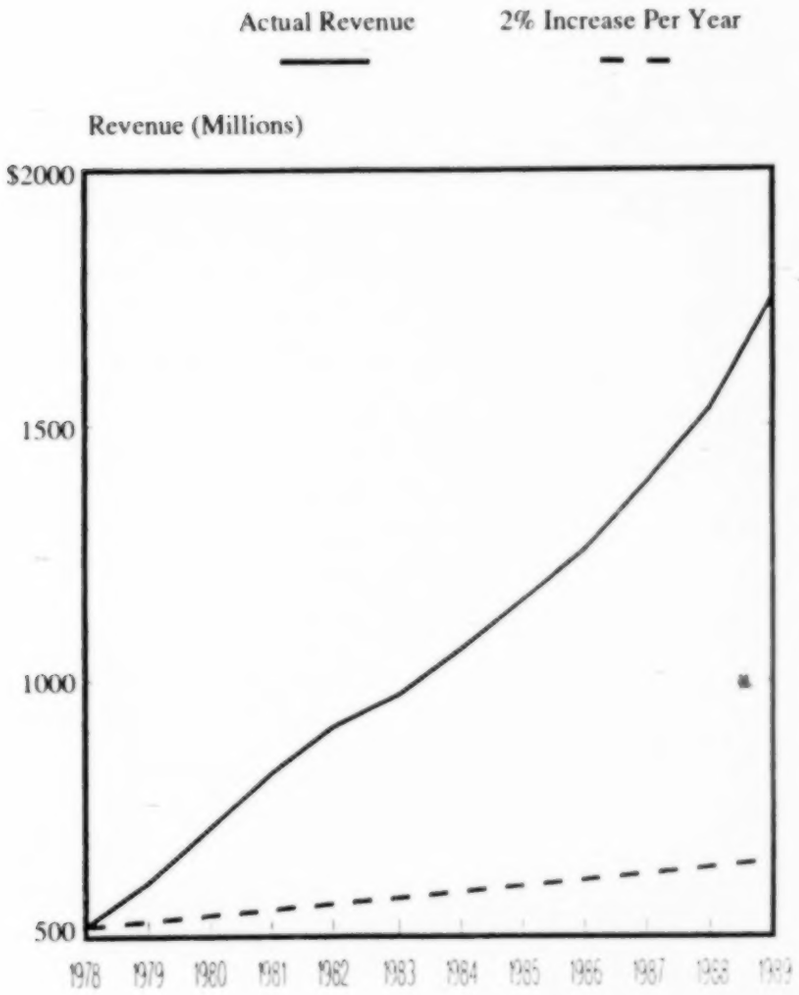
RESTAURANTS NEIGHBORHOOD	RATIO
UNIVERSAL CITY	9:1
INGLEWOOD	8:1
TEMPLE CITY	6:1
STUDIO CITY	6:1
WHITTIER	6:1

[1]The ratio is equal to property tax assessments on property purchased in 1989 compared to tax assessments on comparable properties purchased in 1975.

Source: J.A. 68-70, 82-85.

FIGURE 3

ACTUAL PROPERTY TAX REVENUE FROM LOS ANGELES COUNTY HOMEOWNERS COMPARED TO 2% INCREASES PER YEAR



Source: Los Angeles County Assessor's 1989 Roll Release, J.A. 45. (*See* Table 6.)

TABLE 6

ACTUAL REVENUE UNDER PROPOSITION 13 COMPARED TO 2% ANNUAL INCREASE[1]

Los Angeles County Single Family Residential Property Tax (in million of dollars)

	Actual Revenue	2% Increase Per Year
1978	$ 520[2]	$ 520
1979	604	530
1980	712	541
1981	820	552
1982	908	563
1983	972	574
1984	1,059	586
1985	1,157	597
1986	1,255	609
1987	1,388	621
1988	1,532	634
1989	1,751	647
Increase in Annual Revenue 1978-1989:	$ 1,231	$127

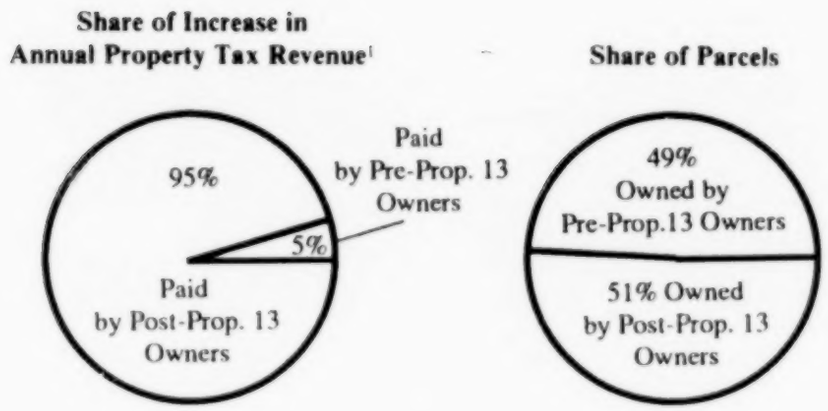
[1]This Table and Figure 3 compare Los Angeles County's annual residential property tax revenue increase under Article XIII A to the much smaller increase that would have occurred if all residential assessment increases had been limited by the 2% per year cap. Actual 1989 revenue was $1.23 billion higher than 1978 revenue under Proposition 13. The increase that would have occurred under application of the 2% per year cap to all single family homes would have been only $127 million.

[2]The 1978 revenue figure represents the revenue resulting from the application of the 1% tax rate to the assessment base as readjusted by the Los Angeles County Assessor pursuant to Proposition 13.

Source: Los Angeles County Assessor's 1989 Roll Release, J.A. 45.

FIGURE 4

SINGLE FAMILY RESIDENCES
LOS ANGELES COUNTY - 1989



[1]As Table 6 and Figure 3 show, Los Angeles County single family residential property tax revenues were $1.23 billion higher in 1989 than in 1978, when Proposition 13 passed. As Table 6 and Figure 3 also show, the total tax revenues raised in 1989 would have been only $127 million higher than 1978 revenues, had Proposition 13 limited assessment increases on all properties to 2%, without the change in ownership and new construction provisions.

As of 1989, owners who retained their property since 1978, and hence experienced only the 2% annual increase in their assessments, owned about 49% of residential parcels. J.A. 37. Their contribution to the $1.23 billion increase Los Angeles County homeowners paid in 1989 was 49% of $127 million, or $62 million. That was 5% of the $1.23 billion. The other half of homeowners (51%) who purchased their properties since 1978 paid the remaining $1.189 billion, which was 95% of the increase.

Source: J.A. 37, 45. *See* Table 6, Figure 3.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on December 23, 1991, I served the within *Petitioner's Brief on the Merits* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: original and forty copies)

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(Counsel for Respondents)

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Daniel Lungren
3580 Wilshire Boulevard
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Los Angeles, California 90010

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 23, 1991, at Los Angeles, California.

Peter Sandanavicius
(Original signed)